

REMARKS

Claim Status

Claims 2, 5, 8-12 and 16-25 are cancelled in view of the pending restriction requirement and to reduce the potential total number of independent claims to five in view of the Patent Office's amendment to 37 CFR § 1.75(b) becoming effective November 1, 2007. Cancellation of these claims is made without prejudice to pursuing the subject matter thereof in one or more future divisional applications.

Method claims 1, 3, 4, 6 and 13-15 are withdrawn in view of the pending restriction requirement. Applicants will seek to rejoin these claims with those composition claims deemed allowable in the forthcoming examination proceedings.

Claim 26 is new and supported by original claims 10 and 12, as well as the specification (e.g. paragraph 47, Figure 5).

Claims 1, 3, 6, 7 and 13-15 are currently amended. Claims 1, 6, 7 and 13-15 are amended partly in view of the pending restriction requirement to delete non-elected subject matter. Applicants reserve the right to pursue claim coverage for this deleted subject matter in one or more future divisional applications. Support for the direct recitation of the FIR peptide SEQ ID NO:4 in claims 1 and 7 is in the specification (e.g. paragraphs 12, 13, 47). Certain other amendments to the claims are made for clarification purposes.

Applicants respectfully submit that the foregoing amendments to the claims do not introduce any new subject matter to the application. With the present amendments, there are two claims pending for examination, namely claims 7 and 26.

Restriction Requirement

The Examiner alleges that the instant application claims a total of twenty-eight different inventions and therefore issues a restriction requirement. These inventions as listed in the Office Action are summarized as follows:

Group I: A method for identifying a compound using a viral fusion initiation region (FIR) (claims 1-6).

Group II: An isolated peptide comprising a FIR (claims 7-12). Election of this group also requires election of one of the following twenty peptides for which the isolated peptide comprises: SEQ ID NOS:1-15, 22-25 and 30. Group II thus is directed to twenty inventions.

Group III: A method of treating or preventing a viral infection by administering a compound identified by the method of Group I (claims 13 and 16).

Group IV: A method of treating or preventing a viral infection by administering a peptide of Group II (claim 14).

Group V: A method of treating or preventing a viral infection by administering a recombinant DNA molecule that enables or simulates production of a FIR (claim 15).

Group VI: An isolated antibody (claims 17 and 18).

Group VII: An isolated nucleic acid (claim 19).

Group VIII: A method for producing an antibody (claims 20-23).

Group IX: A method of identifying a viral fusion initiation region (claims 24 and 25).

Without traverse, Applicants elect group II, and by requirement, more specifically elect an isolated peptide comprising SEQ ID NO:4, which is a FIR from influenza virus. Claims 7 and 26, as currently pending, read on the elected invention.

Certain method claims pertaining to the elected invention (claims 1, 3, 4, 6, 13-15) are currently withdrawn. However, since these claims incorporate the elected subject matter,

Applicants respectfully submit that they should be considered for rejoinder upon allowance of the pending composition claims.

Regarding the alleged lack of unity of inventions I and III, Applicants respectfully indicate for the record that this finding does not properly adhere to PCT rules. In justifying the restriction between inventions I and III, the Examiner asserts that their shared technical feature – identifying a compound using a viral FIR – is anticipated by Atabani et al. (1997, *J. Virol.* 71:7240). The allegation is made in part by maintaining that “[t]ables 2 and 3 of Atabani et al. disclose a peptide, which appears to be a functional segment of the FIR of SEQ ID NO:6.” Although Atabani discloses a segment of SEQ ID NO:6, it does not disclose SEQ ID NO:6 in its entirety. Since the technical feature recited in claim 1 requires a target comprising a FIR (i.e. not just a FIR segment), Atabani cannot serve as prior art for lodging this particular unity objection.

The above remarks notwithstanding, Applicants reserve the right to file one or more divisional applications to protect non-elected inventions.

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Besides the fee for requesting a one-month extension of time for responding to the current action, no other fee is believed to be due in relation to filing this document. However, the Commissioner is hereby authorized to deduct any underpayment of fees from Howrey LLP Deposit Account 08-3038/12920.0013.PCUS00.

Respectfully submitted,



Dennis R. Chesire
Reg. No. 57,452
Agent for Assignee
THE ADMINISTRATORS OF THE TULANE
EDUCATIONAL FUND

Customer No. 23369
HOWREY LLP
1111 Louisiana, 25th Floor
Houston, Texas 77002
(713) 787 1400

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